APPENDIX

September 13, 1994

SENATE COMMITTEE ON FINANCE COUNTEROFFER TO HOUSE COMMITTEE ON WAYS AND MEANS OFFER OF AUGUST 22, 1994 ON OUTSTANDING DIFFERENCES ON LEGISLATION IMPLEMENTING THE URUGUAY ROUND TRADE AGREEMENTS

9. Fair Comparison (Article 2.4)

House:

The text of the Ways and Means en bloc amendment reads: "A fair comparison shall be made between the export price and normal value. The Administration's proposal already provides that in order to achieve a fair comparison with the export price, the normal value shall be determined as provided in section 773. A conforming amendment will be made to the Statement of Administrative Action."

Explanation. Amends current law to adopt the Administration's proposal for: (1) making the methodology for calculating a dumping margin for *related party* transactions more similar to that used for *unrelated party* transactions; and (2) modifying the adjustments made to the price of subject merchandise exported to the United States (known as the "export price") and the corresponding price of merchandise sold in the country of export or production (known as "normal value").

The new methodology for calculating a dumping margin provides that the export price is the price at which the subject merchandise is sold in the United States or sold for exportation to the United States to the first purchaser not affiliated with the foreign producer or exporter (*i.e.*, the first unrelated

purchaser). Similarly, normal value is the constructed value or price to the first unrelated purchaser.

Rather than deducting indirect selling expenses such as overhead from the export price and normal value, as required under current law, the House proposal would, to the extent practicable, establish normal value at the same level of trade as the export price. Adjustments to normal value for differences in level of trade would only be granted where such differences actually involve different selling activities, and affect price comparability. Normal value would also be adjusted to account for differences in the quantity of merchandise sold in transactions used to calculate export price and normal value or other differences, to the extent that these differences are shown to affect price comparability, and for physical differences between the merchandise sold in the U.S. and merchandise sold in the foreign market.

Adjustments made, where appropriate, to the export price and/or normal value for packing and transportation expenses, including pre-sale freight expenses, would ensure that dumping margins are calculated on an ex-factory basis, as required by Article 2.4 of the Agreement. Under current law and practice, pre-sale freight expenses are not generally deducted from the price of merchandise in the foreign market, but such expenses are deducted from the U.S. price.

Similarly, consumption taxes that are levied upon sales in the home market, but that are either rebated or not collected upon sales to the United States would be deducted from normal value. Under current law, an imputed tax is added to the price of export sales to offset the effect of such taxes. In addition, the House position would also deduct from the export price and/or normal value, as appropriate, all direct expenses, defined statutorily in the draft

bill as those that result from, and bear a direct relationship to, a sale of subject merchandise.

Senate:

Retains current law's methodology which distinguishes between the prices established in transactions between related parties (exporter's sales price (ESP)) and unrelated parties (purchase price), with two amendments: (1) revises the additional adjustments for ESP sales to provide, pursuant to Article 2.4, for an allowance for profits accruing, where merchandise has increased in value as a result of sales and distribution activities and any further manufacture or assembly in the U.S.; (2) includes a provision identical to the House with respect to adjustments for level of trade, quantities sold, and physical differences.

House Offer:

Defer.

Senate Counteroffer:

House recedes.